

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MELVIN STANLEY FOWLKES,

Petitioner,

v.

CASE NO. 03-CV-71597

HONORABLE GEORGE CARAM STEEH

DUNCAN MACLAREN,

Defendant.

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**ORDER DENYING PETITIONER'S MOTION  
FOR RELIEF FROM JUDGMENT (Doc. 21)**

Melvin Fowlkes, a Michigan prisoner appearing pro se, has filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b) of this court's January 8, 2004 order (Doc. 18) denying his 42 U.S.C. § 2254 habeas corpus petition. Fowlkes was convicted in 1999, following a plea of nolo contendere, of two counts of assault with intent to commit murder and one count of being a felon in possession of a firearm. Fowlkes filed a motion to file a second or successive habeas petition which the Sixth Circuit denied on May 1, 2013. In his motion for relief from judgment, he argues that his due process rights were violated because the Sixth Circuit did not issue a formal mandate in connection with its order denying his petition to file a second or successive petition, and that this court erred in its 2004 order denying his habeas petition because this court allegedly failed to address his argument that the state court lacked jurisdiction to impose his sentence.

Fowlkes' motion is time-barred. Federal Rule of Civil Procedure 60(c)(1) requires that a motion brought under Rule 60(b) must be made within "a reasonable time" and for

reasons set forth in Rule 60(b)(1)-(3), “no more than a year after the entry of the judgment or order.” The order which Fowlkes seeks to challenge was entered on January 8, 2004, nearly ten years ago. Clearly, that falls outside the one-year period set forth for motions brought under Rule 60(b)(1)-(3), and to the extent he seeks relief under Rule 60(b)(4)-(6), the motion has not been filed within a “reasonable time.” To the extent that Fowlkes claims the Sixth Circuit erred in not entering a formal mandate, that issue is not properly before this district court.

Accordingly, Fowlkes’ motion for relief from judgment (Doc. 21) hereby is DENIED.

**IT IS SO ORDERED.**

Dated: October 28, 2013

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on October 28, 2013, by electronic and/or ordinary mail and also on Melvin Fowlkes #291038, Carson City Correctional Facility, P. O. Box 5000, Carson City, MI 48811.

s/Barbara Radke  
Deputy Clerk